

Appendix C
Most Current Agreement between U.S. Bureau of
Reclamation, California Department of Fish and
Game, and Townsend Flat Water Ditch Company

AGREEMENT
For
Saeltzer Dam Fish Passage and Flow Preservation Project
by and among
TOWNSEND FLAT WATER DITCH COMPANY,

THE McCONNELL FOUNDATION, CENTERVILLE WATER SERVICES DISTRICT,
U.S. BUREAU OF RECLAMATION, and CALIFORNIA DEPARTMENT OF FISH AND
GAME

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ATTACHMENTS

ATTACHMENT 1 – EXCHANGE AGREEMENT, CONTRACT BETWEEN THE UNITED STATES AND THE McCONNELL FOUNDATION FOR EXCHANGE OF WATER

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ATTACHMENT 3 - PROJECT SCHEDULE

ATTACHMENT 4 – INSTREAM FLOW PRESERVATION AGREEMENT

AGREEMENT
For
Saeltzer Dam Fish Passage and Flow Preservation Project

by and among

**TOWNSEND FLAT WATER DITCH COMPANY, THE McCONNELL FOUNDATION,
CENTERVILLE WATER SERVICES DISTRICT
U.S. BUREAU OF RECLAMATION, and
CALIFORNIA DEPARTMENT OF FISH AND GAME**

This Agreement, entered into by and among the TOWNSEND FLAT WATER DITCH COMPANY (Townsend), THE McCONNELL FOUNDATION, CENTERVILLE WATER SERVICES DISTRICT, UNITED STATES BUREAU OF RECLAMATION (Reclamation), and CALIFORNIA DEPARTMENT OF FISH AND GAME (Department) (hereinafter collectively referred to as the "Parties") defines the actions and commitments each Party will undertake as part of the proposed Saeltzer Dam Fish Passage and Flow Preservation Project (Proposed Project), as defined herein, located in the Clear Creek watershed in Shasta County, California.

1.0 RECITALS

The Parties enter into this Agreement with the following understandings:

- 1.1 Clear Creek is a tributary of the Sacramento River located in Shasta County that is regulated by Whiskeytown Dam. State and Federal fisheries agencies desire to improve access to Clear Creek for fall-run, late fall-run, and spring-run chinook salmon and steelhead trout. Currently, the dominant population in Clear Creek is fall-run chinook salmon numbering between seven thousand (7,000) and nine thousand (9,000) returning adults.
- 1.2 Townsend, a California corporation acting as a mutual water company, owns and operates Saeltzer Dam, which is located six (6) miles upstream of Clear Creek's

confluence with the Sacramento River.

- 1.3 In 1997, in response to opportunities to apply for State and Federal fish and wildlife resource restoration funds, Townsend examined a number of remedies for fish passage at Saeltzler Dam. The Department of Water Resources and Reclamation completed engineering feasibility studies for fish passage at Saeltzler Dam during the past three (3) years. The Clear Creek Coordinated Resource Management Group (Management Group), made up of representatives from the State and Federal resource agencies and fisheries, environmental, local, agricultural, power, and urban stakeholder communities, was formed to accelerate chinook salmon and steelhead restoration in the Clear Creek watershed. The Management Group endorsed a plan to pursue a remedy to the Saeltzler Dam fish passage problem as soon as possible.
- 1.4 Townsend and Reclamation met in the fall of 1999 and in early 2000 to pursue an agreement to resolve the fish passage problem at Saeltzler Dam. To this end, Townsend and Reclamation entered into an Agreement in Principle on March 11, 2000.
- 1.5 The purpose of the Proposed Project is to resolve the fish passage problem in Clear Creek at Saeltzler Dam. The major elements of the Proposed Project consist of the following: preparing necessary environmental documents; satisfying Townsend's appropriative water right on Clear Creek; paying two million five hundred thousand dollars (\$2,500,000) to Townsend in exchange for its relinquishment of certain rights; ensuring that releases from Whiskeytown Dam are at a minimum, equivalent to the releases made pursuant to the existing informal agreement between Reclamation and the National Park Service (Parks); removing and disposing of the sediment that has accumulated behind Saeltzler Dam; and removing Saeltzler Dam, its headworks, and fish ladders (hereinafter collectively referred to as "Saeltzler Dam"), all of which are described in greater detail below.
- 1.6 Other actions to restore fish habitat are being implemented in the Clear Creek watershed that are not directly related to the operation of Saeltzler Dam or the Proposed Project. Although these actions are outside the scope of the Proposed Project, they are considered important to the overall success of restoring

anadromous fishery resources in the Clear Creek watershed.

- 1.7 Implementation of the Proposed Project is intended to further the purposes of various State and Federal restoration directives and programs, including, but not limited to, the following:

- Section 3406, subdivisions (b)(1) and (b)(12) of the Central Valley Project Improvement Act of October 30, 1992 (CVPIA; Title XXXIV of Pub. L. 102-575);
- Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Fish & G. Code, §6900 et seq.)
- Central Valley Salmon and Steelhead Restoration and Enhancement Plan (California Department of Fish and Game, April 1990);
- Draft CALFED Ecosystem Restoration Program Plan (CALFED Bay-Delta Program, April 2000);
- Upper Sacramento River Fisheries and Riparian Habitat Management Plan (Upper Sacramento River Fisheries and Riparian Habitat Advisory Council, January 1989);
- Restoring Central Valley Streams: A Plan for Action (California Department of Fish and Game, November 1993); and
- Steelhead Restoration and Management Plan for California (California Department of Fish and Game, February 1996).

- 1.8 Reclamation is participating in the Proposed Project pursuant to Section 3406, subdivision (b)(12) of the CVPIA and will be the lead agency under the National Environmental Policy Act (NEPA; 42 U.S.C. Section 4321 et seq.).
- 1.9 Department is participating in the Proposed Project as the owner of the land upon which Saeltzler Dam is located, the lead agency under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.), and a party to a Memorandum of Operating Agreement with Reclamation, dated

March 31, 1960, which requires Reclamation to bypass or release minimum quantities of water to Clear Creek at Whiskeytown Dam to protect and preserve fish and wildlife resources in Clear Creek. In addition, Department is the trustee agency for the State's fish and wildlife resources (Fish & G. Code, § 711.7, subd. (a); Cal. Code Regs., tit. 14, § 15386) and has jurisdiction over the conservation, protection, and management of the State's fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802), and other applicable State laws, including laws intended to protect threatened and endangered species.

- 1.10 Townsend is participating in the Proposed Project as owner and operator of Saeltzer Dam, holder of the easement upon which Saeltzer Dam is located, and the holder of a pre-1914 appropriative water right on Clear Creek.

NOW, THEREFORE, the Parties agree as follows:

2.0 PURPOSES

The purposes of this Agreement are as follows:

- 2.1 To identify and implement the activities that comprise the Proposed Project;
- 2.2 To identify the roles and responsibilities of each of the Parties to implement this Agreement and the Proposed Project; and
- 2.3 To identify the contingencies and limitations that could affect the implementation of this Agreement and the roles and responsibilities of each of the Parties under this Agreement.

3.0 ELEMENTS OF PROPOSED PROJECT

The Proposed Project consists of the following activities, all of which are described in greater detail in Section 4.0 below:

3.1 Compliance With Environmental and Other Laws

Compliance with all local, State, and Federal environmental and other laws that apply to the Proposed Project.

3.2 Water Settlement

Satisfaction of Townsend's appropriative water right on Clear Creek.

3.3 Monetary Settlement

Payment of two million five hundred thousand dollars (\$2,500,000) by Reclamation to Townsend in exchange for the relinquishment of certain rights by Townsend.

3.4 Instream Flow Preservation

Assurances that future releases of water from Whiskeytown Dam are, at a minimum, consistent with Attachment 4.

3.5 Facility Modifications

Removal and disposal of sediment that has accumulated behind Saeltzer Dam and removal of Saeltzer Dam.

4.0 TERM OF AGREEMENT

Subsection 5.1.A., B., and C. of this Agreement shall be in force and effect commencing on the date on which this Agreement is executed by the Parties. The remainder of the Agreement shall not be in force and effect until the Closing as provided in Section 7.0.

5.0 ROLES AND RESPONSIBILITIES

The Parties will implement the Proposed Project consistent with the following:

5.1 Compliance with Environmental and Other Laws

- A. Reclamation shall assume the role of lead agency for purposes of evaluating the Proposed Project under NEPA; Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. § 1536), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470 et seq.), and the Fish and Wildlife Coordination Act (16 U.S.C. § 661-666, subd. (c)). In addition, Reclamation shall assume the role of applicant for all permits needed under local, State, and Federal law to complete the Proposed Project.
- B. Department will act as lead agency under CEQA and fulfill any obligations it may have under the California Endangered Species Act (CESA; Fish & G. Code, § 2050 et seq.) and Fish and Game Code Sections 1600 through 1607, inclusive.
- C. Reclamation will pay 100 percent (%) of all costs associated with: (a) preparing all State and Federal environmental documents required to complete the Proposed Project; and (b) preparing the initial site characterization and subsequent analyses to determine the presence of hazardous substances before, during, and after the removal of Saeltzer Dam and the disposal of the sediment accumulated behind Saeltzer Dam. Reclamation will be responsible for selecting contractors to prepare the environmental documents and determine the presence of hazardous substances.

5.2 Water Settlement

Reclamation will provide Townsend with six thousand (6,000) acre-feet of water annually through Exchange Agreements with the two Townsend shareholders (McConnell Foundation and Centerville Community Services District) in forms substantially similar to those attached hereto as Attachments 1 and 2 in exchange for Townsend's pre-1914 appropriative water right in excess of the first six thousand (6,000) acre-feet.

5.3 Monetary Settlement

Reclamation will pay Townsend two million five hundred thousand dollars (\$2,500,000) and, in exchange for this payment, Townsend will: (1) release its contractual interest in the 1960 Reclamation-Townsend Settlement Agreement; (2) not replace Saeltzer Dam with another diversion structure in Clear Creek; (3) transfer to Reclamation all of its right to divert water from Clear Creek below Whiskeytown Dam at Saeltzer Dam or at any other location on Clear Creek; (4) relinquish its interest in Saeltzer Dam; (5) release by quitclaim deed to the Department Townsend's easement underlying Saeltzer Dam; and (6) grant to Reclamation by deed its pre-1914 water right in excess of the first six thousand (6,000) acre-feet recognized by Reclamation and as provided in Attachments 1 and 2.

5.4 Instream Flow Preservation

- A. Reclamation will ensure that releases from Whiskeytown Dam are, at a minimum, equivalent to the releases made pursuant to the agreement attached hereto as Attachment 4.
- B. Reclamation shall not divert any water in Clear Creek between Whiskeytown Dam and the confluence of Clear Creek and the Sacramento River under any claim of right, including the pre-1914 appropriative right assigned to Reclamation by Townsend. Reclamation shall not exercise, transfer, sell, lease, or otherwise assign any interest in the pre-1914

appropriative right assigned to Reclamation by Townsend to any other party.

5.5 Facility Modifications

- A. Townsend will assign to Reclamation all of Townsend's right, title, and interest in the physical facilities comprising Saeltzer Dam, excluding the Townsend Ditch. Townsend will release by quitclaim deed to Department Townsend's easement upon which Saeltzer Dam is located.
- B. Townsend shall be responsible for the maintenance and/or abandonment of the Townsend Ditch and shall respond to, and, if necessary, satisfy, any legal claims from persons or entities who take or use, or claim a right to take or use, water from the Townsend Ditch. Mitigation, which may be required due to the abandonment of the Townsend Ditch, shall be provided in accordance with Section 8.0.B of this Agreement.
- C. Reclamation will pay 100 percent (%) of capital costs, currently estimated at One Million Two Hundred Fifty Thousand Dollars (\$1,250,000), to: (a) remove and dispose of any sediment that has accumulated behind Saeltzer Dam; (b) remove Saeltzer Dam in accordance with the schedule and work plan prepared by Reclamation attached hereto as Attachment 3, which schedule and work plan Reclamation may revise as necessary; and (c) complete and fund any and all mitigation required as part of the Proposed Project, except as provided in Section 5.5.B.
- D. Department shall permit access as required over and across its lands in the Clear Creek watershed to Reclamation, Townsend, and their employees, agents, and contractors or other necessary parties for the purpose of implementing this Agreement. Townsend shall permit access as required along and in its ditch and over and across its easement upon which Saeltzer Dam is located to Reclamation, Department, and their employees, agents, and contractors or other necessary parties for the purpose of implementing this Agreement.

- E. Reclamation's Project Manager will be responsible for coordinating the implementation of Planning and Construction activities among the Parties, with other appropriate interested persons, and with all State and Federal agencies with jurisdiction over some aspect of the Proposed Project. The Project Manager, after the effective date of this Agreement, will meet at appropriate frequency with the Parties to assess the status of the Proposed Project status and to facilitate coordination.
- F. No operations, maintenance, or repair costs are associated with this project.

6.0 PROJECT IMPLEMENTATION

6.1 Planning, Permitting, and Construction Activities

- A. Reclamation is the lead for planning, design, and construction including: activities associated with environmental compliance, NEPA/CEQA compliance, permitting actions, design data collection, conceptual designs, final designs, specification preparation, real estate acquisition and transfer, public involvement, quality control, and procurement processes leading to construction, and construction project management.
- B. The Parties agree to use their best efforts to implement the Proposed Project according to the schedule and work plan prepared by Reclamation attached hereto as Attachment 3.
- C. Planning, permitting, and construction of the Proposed Project will be implemented through the cooperative effort of the Parties as led by Reclamation's Project Manager.
- D. All work shall be performed in accordance with Reclamation's Safety and Health Standards, and OSHA and Cal-OSHA regulations. In the event of any conflicts, the most stringent requirements shall apply.

6.2 Public Participation

All project-related meetings will be open to any interested persons. Additional opportunities for public participation will be afforded as part of public review and comment under NEPA/CEQA.

7.0 CLOSING

The exchange of documents and the payment provided for below (the "Closing") shall take place at The McConnell Foundation, 800 Shasta View Drive, Redding, California 96001. Reclamation shall notify the Parties, in writing, within five (5) business days of that date upon which all environmental reviews and permit requirements have been completed to Reclamation's satisfaction, and Reclamation has obtained all funding needed to carry out the financial responsibilities of Reclamation under this Agreement. Federal funding needed to carry out Reclamation's responsibilities shall be subject to the availability of appropriated funds pursuant to the Anti-Deficiency Act (31 U.S.C. § 1341). Any lack of funding to meet Reclamation's responsibilities shall not result in the transfer of such responsibilities or funding obligations to Townsend or Department. The Closing shall be held at 10:00 a.m. on or before that day which is the tenth (10th) business day following the notification by Reclamation.

7.1 Reclamation's Obligations at Closing

At the Closing, Reclamation shall deliver or cause to be delivered, the following:

- A. The sum of Two Million Five Hundred Thousand Dollars (\$2,500,000), payable to those persons or entities designated in writing by Townsend.
- B. A fully executed Exchange Agreement between Reclamation and The McConnell Foundation, as a shareholder of Townsend, for five thousand one hundred (5,100) acre-feet of water on an annual basis (Attachment I).

- C. A fully executed Exchange Agreement between Reclamation and Centerville Community Services District, as a shareholder of Townsend, for nine hundred (900) acre-feet of water on an annual basis. (Attachment 2).
- D. A fully executed agreement terminating the Agreement dated May 23, 1960, between the United States and Townsend.
- E. A fully executed Instream Flow Preservation Agreement among Reclamation, Service, and the Department protecting flows in Lower Clear Creek.

7.2 Townsend's Obligations at Closing

At the Closing, Townsend shall deliver or cause to be delivered, the following:

- A. A fully executed Exchange Agreement between Reclamation and The McConnell Foundation, as a shareholder of Townsend, for five thousand one hundred (5,100) acre-feet of water on an annual basis.(Attachment 1).
- B. A fully executed Exchange Agreement between Reclamation and Centerville Community Services District, as a shareholder of Townsend, for nine hundred (900) acre-feet of water on an annual basis.(Attachment 2).
- C. A fully executed agreement terminating the Agreement dated May 23, 1960, between the United States and Townsend.
- D. A fully executed Assignment to Reclamation of the right, title, and interest of Townsend in and to Saeltzer Dam.
- E. A fully executed and acknowledged Quitclaim Deed from Townsend to the Department for Townsend's easement for Saeltzer Dam.

- F. A fully executed and acknowledged Deed transferring to Reclamation Townsend's pre-1914 appropriative water rights, in excess of the first six thousand (6,000) acre-feet of water in exchange for an annual entitlement to six thousand (6,000) acre-feet of water in accordance with Attachments 1 and 2.

8.0 ENVIRONMENTAL LIABILITIES

- A. Investigations conducted during the environmental analysis and document preparation phase shall include appropriate surveys to determine whether any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. § 9601 et seq.) are present in the sediment accumulated behind Saeltzer Dam or on, in, or under lands, easements, and rights-of-way that must be excavated or accessed to accomplish the Proposed Project. Reclamation shall provide Townsend and Department with Five Million Dollars (\$5,000,000) insurance to cover its risk of liability arising from the release of hazardous substances from said sediment in, on or under said lands, easements, and rights-of-way. In the event it is discovered during the environmental analysis and document phase that hazardous substances regulated under CERCLA are present at levels designated as hazardous waste in the sediment accumulated behind Saeltzer Dam or in, on, or under any lands, easements, or rights-of-way that must be excavated or accessed to accomplish the Proposed Project, all further work on the Proposed Project shall cease, unless and until all Parties reach agreement on how to proceed.
- B. Townsend and the Department will cost share, on an equal basis, subject to a limitation of Fifty Thousand Dollars (\$50,000) for each Party, necessary and feasible mitigation measures identified during the preparation of the Environmental Assessment/Initial Study, and subsequent final environmental documentation relating to the biological impacts of decommissioning the ditch. Reclamation, Townsend, and Department make no further financial commitment at this time. In the event that the cost of necessary and feasible mitigation measures for biological impacts exceeds One Hundred Thousand Dollars (\$100,000), the Parties to this agreement will work collaboratively to identify and

obtain additional sources of funding from any available source. Should adequate additional sources of funding be unavailable, any Party may terminate this agreement by ninety (90) days prior written notice to the other Parties.

9.0 DISPUTE RESOLUTION

In the event any one of the Parties to this Agreement believes there is an issue regarding the interpretation of, or compliance with, any provision of this Agreement, that Party shall notify each Party in writing. The Parties shall meet within thirty (30) days of such written notice, or at another mutually agreed date, in an effort to resolve the issue. If resolution is not achieved, the Parties will select a mediator within fourteen (14) days from the date the Parties determine that resolution cannot be achieved without mediation, unless that date is extended by mutual agreement. If the Parties are unable to agree on a mediator, the Parties shall select and pay for the costs of the mediator, in an amount not to exceed Five Thousand Dollars (\$5,000) per Party, in accordance with Judicial Arbitration Mediation Service rules. Any mediation shall be non-binding. In the event that resolution through non-binding mediation is not achieved, any of the Parties may seek any available appropriate administrative or judicial remedy.

10.0 NOTICE

All notices under this Agreement shall be in writing sent to the persons listed below by: (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the United States Mail; (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier; or (c) telecopier, fax, or similar means, if a copy of the notice is also sent by United States certified mail, and in which case notice shall be deemed delivered one (1) business day after the deposit of the copy in the United States mail.

U.S. Bureau of Reclamation:

Michael Ryan
16349 Shasta Dam Boulevard
Shasta Lake, California 96019
Phone No. (530) 275-1554

California Department of Fish and Game:

Don Koch

601 Locust Street

Redding, California 96001

Phone No. (530) 225-2360

11.0 MISCELLANEOUS

11.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties.

11.2 Captions

The captions on the various sections of this Agreement are for convenience of reference only and shall not affect the meaning of any of its provisions.

11.3 Modifications: Waiver

No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto. No waiver of any provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.4 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.5 Further Assurances

Each of the Parties shall execute such documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions of this Agreement, and the intentions contemplated by this Agreement. Each party shall use its best efforts to fulfill or obtain the fulfillment of the conditions to the Closing, including, without limitation, execution and delivery of any documents or other papers, the execution and delivery of which are conditions precedent to the Closing.

11.6 Time of the Essence

Time is of the essence with respect to this Agreement and the obligations of each of the Parties hereto.

11.7 Recitals and Exhibits

The recitals contained in this Agreement are hereby made a part of this Agreement. The following exhibits referred to in this Agreement are attached hereto and incorporated in this Agreement by this reference in their entirety: Attachments 1, 2, 3, and 4.

11.8 Power and Authority

The representatives of the Parties subscribing below represent and warrant that they have full power, authority, and legal right to execute and deliver this Agreement on behalf of the party for which such representative is executing this Agreement, and that the Agreement constitutes a valid and binding obligation of the party.

11.9 Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, heirs, and assigns.

11.10 No Party Deemed Drafter

In the event of a dispute between any of the Parties hereto over the meaning of this Agreement or any part thereof, no party shall be deemed to have been the drafter hereof, and the principle of law that contracts are construed against the drafter shall not apply.

11.11 Effective Date

This Agreement shall be effective upon the last date of execution of this Agreement and is of no force or effect until signed by all Parties. Any work initiated by any party prior to the effective date is done at that party's own risk and expense.

IN WITNESS WHEREOF, the Parties to this Agreement have hereunto
executed this Agreement as of the day and year set forth by their respective signatures herein
below.

U.S. BUREAU OF RECLAMATION

Lester A. Snow
Regional Director

Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

Robert C. Hight
Director

Date

TOWNSEND FLAT WATER DITCH COMPANY

Doreeta Domke
President

Date

THE McCONNELL FOUNDATION

Lee W. Salter, President and CEO
President

Date

CENTERVILLE COMMUNITY SERVICES DISTRICT

L.D. Whitehead, President and Board of Directors

Date

(A:Agreem~1.wpd)

AGREEMENT TO DEDICATE CVPIA SECTION (b)(2) WATER

by and among

U.S. FISH AND WILDLIFE SERVICE and

U.S. BUREAU OF RECLAMATION

This Agreement is entered into by and among U.S. Fish and Wildlife Service (Service), and U.S. Bureau of Reclamation (Reclamation), (hereinafter collectively referred to as the "Parties") as an element of the proposed Saeltzner Dam Fish Passage and Flow Preservation Project.

1.0 RECITALS

The Parties enter into this Agreement with the following understandings:

- 1.1 Clear Creek is a tributary of the Sacramento River located in Shasta County that is regulated by Whiskeytown Dam. State and federal fisheries agencies desire to improve access to Clear Creek for fall-run, late fall-run, and spring-run chinook salmon and steelhead trout. A Comprehensive Program to provide flows for these species in conjunction with stream restoration and fish passage at the Saeltzner Dam is a major requirement of the Central Valley Project Improvement Act (CVPIA).
- 1.2 Reclamation and Townsend Flat Water Ditch Company (Townsend) are pursuing the proposed Saeltzner Dam Fish Passage and Flow Preservation Project (Proposed Project). A key component of the Proposed Project is the elimination of Townsend's diversion of up to 12,500 acre-feet of Clear Creek flows at Saeltzner Dam. In exchange, Reclamation will provide Townsend with 6,000 acre-feet of water annually. Other components of the Proposed Project that are requisite to this Agreement include:
 - a. Removal of the Saeltzner Dam; and
 - b. Execution and implementation a new base instream flow agreement incorporating the pertinent provisions of the existing California Department of Fish and Game and National Park Service agreement.

2.0

OBLIGATIONS:

The Parties agree as follows:

- 2.1 Reclamation will enter into and implement a new instream flow agreement with the Service and California Department of Fish and Game specifying minimum instream flows in Clear Creek.
- 2.2 Reclamation will take whatever legal and/or administrative action is reasonably necessary to ensure the minimum instream flows referenced in paragraph 2.1 above are protected from diversion to the confluence of Clear Creek with the Sacramento River.
- 2.3 In recognition of the improved flow conditions in lower Clear Creek that will result from the Proposed Project, and to mitigate impacts to other Central Valley Project water users that might otherwise occur as a result of the Proposed Project, the Service will annually dedicate to the Proposed Project up to 900 acre-feet of CVPIA Section 3406(b)(2) water.
- 2.4 The allocation of CVPIA Section (b)(2) water will commence in the water year (October-September) following implementation of all components of the Proposed Project. The actual amount of CVPIA Section (b)(2) water so dedicated will be 900 acre-feet in each year in which the full 6,000 acre-feet will be delivered to Townsend pursuant to the Reclamation-Townsend Settlement Agreement. In the event that less than 6000 acre-feet is provided, the formula below shall be used to compute the amount of CVPIA Section (b)(2) water dedicated and will reduce the CVPIA Section (b)(2) water dedicated for this purpose in the following water year. That calculation will be based on the increase on consumptive use expected to result from implementation of the Proposed Project and will use the following formula:

$$(b)(2) \text{ allocation} = (\text{Quantity actually delivered} - 4400 \text{ acre-feet}) \times 0.56$$

where:

4,400 = the annual quantity of water historically delivered

to Townsend Water Ditch Company. Annual deliveries in excess of that quantity will be supported with a (b)(2) allocation.

0.56 = the estimated consumptive use rate associated with the anticipated annual deliveries of water to The McConnell Foundation and Centerville Community Services District under the Proposed Project.

A (b)(2) allocation will be made only if the quantity calculated is positive

3.0 MODIFICATION OR TERMINATION

This Agreement shall be fully implemented and remain in effect in perpetuity unless modified or terminated by mutual consent of both Parties.

4.0 SIGNATURES

This Agreement may be executed in counterparts. Reclamation shall retain a copy of the Agreement with all original executed signatures. Reclamation will distribute copies of the Agreement with executed signature pages to the Service within 30 days of the Agreement's execution. Each Party hereby represents and warrants that the person executing this Agreement on its behalf is duly authorized to do so.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date written below:

U.S. BUREAU OF RECLAMATION

Lester Snow, Regional Director

Date

U.S. FISH AND WILDLIFE SERVICE

Michael J. Spear, Manager CA/NV Office

Date

ATTACHMENT 1

NCAO Draft 03/30-2000
R.O. Draft 04/03-2000
Rev. NCAO 04/05-2000
Rev. R.O. 04/06-2000
Rev. SOL.-R.O. 04/11-2000
Rev. R.O. 04/20-2000
Rev. R.O. 05/04-2000
Rev. R.O. 06/02-2000
Rev. R.O. 08/04 - 2000
Contract No.
00-WC-20-1707

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
THE MCCONNELL FOUNDATION
FOR EXCHANGE OF WATER

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
THE MCCONNELL FOUNDATION
FOR EXCHANGE OF WATER

THIS CONTRACT is made this ____ day of _____, 2000, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197), commonly known and referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and THE MCCONNELL FOUNDATION, a California non-profit corporation, hereinafter referred to as the Contractor.

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, Reclamation is constructing and operating the Central Valley Project (CVP), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

1 WHEREAS, the Contractor is an 85 percent shareholder of Townsend Flat Water
2 Ditch Company (Townsend), a California corporation acting as a mutual water company;

3 WHEREAS Townsend Flat Water Ditch Company and/or its shareholder contractor
4 and Centerville Community Services District (Townsend) which hold a pre-1914 right to divert
5 water from Clear Creek, at McCormick-Saeltzer Dam (Saeltzer Dam), which is owned and
6 operated by Townsend; and

7 WHEREAS, in 1960, Reclamation and Townsend, The McConnell Foundation and
8 Centerville Community Services District entered into an Agreement to resolve Townsend's
9 protest of Reclamation's application to appropriate water from Clear Creek for storage in
10 Whiskeytown Reservoir (Settlement Agreement), a component of the Trinity River Division of
11 the Central Valley Project, in which Reclamation agreed not to interfere with Townsend's right
12 to divert up to 55 ft³/s of the natural flow of Clear Creek measured near the Igo Bridge; and

13 WHEREAS, in order to resolve a fish passage problem at Saeltzer Dam in
14 accordance with Section 3406(b)(12) and the general authority of Section 3406(b)(1) of the
15 Central Valley Project Improvement Act of October 30, 1992 (106 Stat. 4706), Reclamation,
16 Townsend, and California Department of Fish and Game entered into an Agreement, dated
17 _____, 2000, which provides for the removal of Saeltzer Dam and the related
18 modification of Townsend's existing right to divert water from Clear Creek pursuant to the terms
19 and conditions of this contract and the related contract with the Centerville Community Services
20 District, the other Townsend shareholder; and

21 NOW THEREFORE, in consideration of the mutual and dependent covenants
22 herein contained, it is hereby mutually agreed between the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Calendar Year" shall mean the period January 1 through December 31, both dates inclusive.

(b) "Substitute Water" shall mean the CVP water made available to the Contractor for diversion at the points of delivery specified herein.

(c) "Year" shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

EFFECTIVE DATE OF CONTRACT

2. This contract shall be effective on the date first herein written and shall remain in effect unless mutually agreed to in writing by Reclamation and the Contractor.

SUBSTITUTE WATER TO BE MADE AVAILABLE

3. (a) In exchange for the Contractor agreeing to the termination of the Settlement Agreement and its commitment not to exercise any right or claim of right to divert water from Clear Creek at the Saeltzer Dam, Reclamation shall make available to the Contractor, for no monetary charge for the Substitute Water or the use of CVP facilities, 5,100 acre-feet of Substitute Water each Year as requested and scheduled by the Contractor as provided in Section 4 herein, for use by the Contractor and/or its designee(s) within the portion of Shasta County that is within the permitted place of use for CVP water and in accordance with the terms and conditions of this contract, and applicable State and Federal laws. The Contractor's designation of one or more persons or entities as designees under this subsection shall not be deemed an assignment or transfer of Substitute Water requiring Reclamation approval.

1 (b) Except as provided in subsection 5(d), Reclamation shall not reduce the
2 annual quantity of Substitute Water made available under this contract, irrespective of any
3 reductions imposed on CVP water right settlement contractors or CVP water service contractors.

4 (c) If the Contractor desires to transfer Substitute Water for use outside the
5 area described in subsection (a) above, the proposed transfer must be determined by Reclamation
6 to be in compliance with the applicable CVP water right permit(s) and all applicable Federal and
7 State laws, including, but not limited to, the National Environmental Policy Act, 42 USC
8 Section 4321, et seq.; and the Endangered Species Act, 16 USC Section 1531, et seq.. All costs
9 associated with such compliance shall be the responsibility of the Contractor.

10 (d) If the place of use of transferred Substitute Water is outside Shasta
11 County, the maximum quantity of Substitute Water available to the Contractor for use within the
12 Contractor's boundaries during the term of such a transfer shall be reduced by 1.786 acre-feet for
13 each acre-foot of Substitute Water transferred outside Shasta County.

14 (e) The Contractor, hereby assigns to Reclamation, on behalf of the United
15 States, any and all rights and claims of right it has to divert any water from Clear Creek in excess
16 of the 5,100 acre-feet per Year for which Substitute Water shall be made available in accordance
17 with the terms and conditions of this contract.

18 TIME FOR EXCHANGE OF WATER / POINT OF DELIVERY FOR SUBSTITUTE WATER

19 4. (a) Substitute Water shall be made available to the Contractor and/or its
20 designee(s) during each Year at existing CVP facilities located in Shasta County or at such point
21 or points of delivery mutually agreed to in writing by Reclamation and the Contractor.

1 (b) On or before March 1 of each Calendar Year, and at such other times as
2 Reclamation deems it necessary, the Contractor shall submit to Reclamation, a written schedule,
3 satisfactory to Reclamation, showing the times and quantities of Substitute Water the Contractor
4 wants Reclamation to make available to the Contractor and/or its designee(s) pursuant to this
5 contract.

6 (c) Reclamation shall make Substitute Water available to the Contractor
7 and/or its designee(s) in accordance with the initial schedule submitted by the Contractor
8 pursuant to subsection (b) above, or any revision(s) thereto, the Contractor submits to
9 Reclamation, and Reclamation approves at least seventy-two (72) hours prior to the date(s) on
10 which the requested change(s) is/are to be implemented.

11 (d) Any Substitute Water not diverted during the month in which it is made
12 available may not be diverted during any other month.

13 MEASUREMENT OF WATER

14 5. (a) The Substitute Water to be made available to the Contractor pursuant to
15 this contract will be measured with equipment owned, installed, operated, and maintained by the
16 Contractor or other parties acceptable to Reclamation. Upon request by Reclamation, the
17 Contractor will investigate the accuracy of such measurements, and any errors discovered will be
18 promptly corrected. Contractor hereby grants to Reclamation such access as may required over
19 and upon Contractor's lands and facilities in order to make such investigation.

20 (b) The Contractor shall provide Reclamation with monthly accounting
21 records acceptable to Reclamation that identify the quantities of Substitute Water the Contractor

1 (c) Reclamation shall not be responsible for the control, carriage, handling,
2 use, disposal, or distribution of water beyond the delivery points, and the Contractor shall hold
3 Reclamation harmless on account of damages or claim of damages of any nature whatsoever for
4 which there is legal responsibility, including property damage, personal injury, or death arising
5 out of or connected with the control, carriage, handling, use, disposal, or distribution of such
6 water.

7 (d) Reclamation may temporarily discontinue or reduce the quantity of
8 water to be furnished to the Contractor as herein provided for the purposes of such investigation,
9 inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof
10 necessary for the furnishing of water to the Contractor, but so far as feasible, Reclamation will
11 give the Contractor as much advance notice as reasonably possible, given the circumstances, of
12 such temporary discontinuance or reduction, except in case of emergency, in which case no
13 notice need be given: Provided, however, That Reclamation will use its best efforts to avoid any
14 discontinuance or reduction in service for a period longer than three (3) days. Upon resumption
15 of service after such reduction and if requested by the Contractor, Reclamation will attempt to
16 deliver the quantity of water, which would have been furnished hereunder in the absence of such
17 contingency.

18 CONSTRUCTION OF CONTRACT

19 6. This contract shall never be construed as a conveyance, abandonment, or
20 waiver of any water right, or right to the use of water, by the Contractor, or as conferring any
21 right whatsoever upon any person, firm, corporation, or governmental agency not a party to this
22 contract, or to affect or interfere in any manner with any right of the Contractor to the use of the

1 waters of Clear Creek, except to and in favor of Reclamation to the extent herein specifically
2 provided.

3 QUALITY OF WATER

4 7. (a) CVP facilities used to make Substitute Water available to the Contractor
5 pursuant to this contract shall be operated and maintained to enable the United States to make
6 Substitute Water available to the Contractor in accordance with the water quality standards
7 specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by
8 Section 101 of the Act of October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The
9 United States is under no obligation to construct or furnish water treatment facilities to maintain
10 or to better the quality of Substitute Water furnished to the Contractor pursuant to this contract.
11 The United States does not warrant the quality of Substitute Water made available and delivered
12 to the Contractor pursuant to this contract.

13 (b) The operation and maintenance of CVP facilities shall be performed in
14 such manner as is practicable to maintain the quality of raw water made available through such
15 facilities at the highest level reasonably attainable as determined by Reclamation.

16 WATER AND AIR POLLUTION CONTROL

17 8. The Contractor, in carrying out this contract, shall comply with all applicable
18 water and air pollution laws and regulations of the United States and the State of California and
19 shall obtain all required permits or licenses from the appropriate Federal, State, or local
20 authorities.

1 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

2 9. The expenditure or advance of any money or the performance of any
3 obligation of the United States under this contract shall be contingent upon appropriation or
4 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
5 Contractor from any obligations under this contract. No liability shall accrue to the United States
6 in case funds are not appropriated or allotted.

7 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

8 10. (a) The provisions of this contract shall apply to and bind the successors
9 and assigns of the parties hereto, but no assignment or transfer of this contract or any right or
10 interest therein shall be valid until approved in writing by Reclamation.

11 (b) The assignment of any right or interest in this contract by either party
12 shall not interfere with the rights or obligations of the other party to this contract absent the
13 written concurrence of said other party.

14 OFFICIALS NOT TO BENEFIT

15 11. No Member of or Delegate to Congress, resident commissioner, or official of
16 the Contractor shall benefit from this contract other than as a water user or landowner in the same
17 manner as other water users or landowners.

18 NOTICES

19 12. Any notice, demand, or request authorized or required by this contract shall be
20 deemed to have been given to Reclamation when mailed, postage prepaid, or delivered to the
21 Area Manager, Northern California Area Office, Bureau of Reclamation, PO Box 988, 1140
22 West Wood Street, Willows, California, 95988, and to McConnell Foundation, when mailed,
23 postage prepaid, or delivered to, PO Box 492050, 800 Shasta View Drive, Redding, California,
24 96049-2050. The designation of the addressee or the address given above may be changed by
25 notice given in the same manner as provided in this Article for other notices.

1 IN WITNESS WHEREOF, the parties hereto have signed their names as of
2 the date and year first above written.
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UNITED STATES OF AMERICA

5 By: _____
6 Regional Director, Mid-Pacific Region
7 Bureau of Reclamation

8 THE MCCONNELL FOUNDATION

9 By: _____
10 President

11 ATTEST:
12

13 By: _____
14 Secretary

15 (I:Mf4.wpd)

ATTACHMENT 2

NCA0 Draft 03/30-2000
R.O. Draft 04/03-2000
Rev. R.O. 04/06-2000
Rev. SOL.-R.O. 04/11-2000
Rev. R.O. 04/20-2000
Rev. R.O. 05/08-2000
Rev. R.O. 06/05-2000
Rev. R.O. 08/04 - 2000
Contract No.
00-WC-20-1708

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
CENTERVILLE COMMUNITY SERVICES DISTRICT
FOR EXCHANGE OF WATER

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
CENTERVILLE COMMUNITY SERVICES DISTRICT
FOR EXCHANGE OF WATER

THIS CONTRACT is made this ____ day of _____, 2000, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197), commonly known and referred to as the Federal Reclamation law, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and CENTERVILLE COMMUNITY SERVICES DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business near Redding, California.

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, Reclamation is constructing and operating the Central Valley Project (CVP), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other

1 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
2 the San Joaquin River and their tributaries; and

3 WHEREAS, the Contractor is a 15 percent shareholder of Townsend Flat Water
4 Ditch Company (Townsend), a California corporation acting as a mutual water company;

5 WHEREAS, Townsend Flat Water ditch Company and/or its shareholder contractor
6 and The McConnell Foundation (Townsend) hold a pre-1914 right to divert water from Clear
7 Creek, at McCormick-Saeltzer Dam (Saeltzer Dam), which is owned and operated by Townsend;
8 and

9 WHEREAS, in 1960, Reclamation and Townsend, Centerville Community Services
10 District, The McConnell Foundation entered into an Agreement to resolve Townsend's protest of
11 Reclamation's application to appropriate water from Clear Creek for storage in Whiskeytown
12 Reservoir (Settlement Agreement), a component of the Trinity River Division of the Central
13 Valley Project, in which Reclamation agreed not to interfere with Townsend's right to divert up
14 to 55 ft³/s of the natural flow of Clear Creek measured near the Igo Bridge; and

15 WHEREAS, in order to resolve a fish passage problem at Saeltzer Dam in
16 accordance with Section 3406(b)(12) and the general authority of Section 3406(b)(1) of the
17 Central Valley Project Improvement Act of October 30, 1992 (106 Stat. 4706), Reclamation,
18 Townsend, and California Department of Fish and Game entered into an Agreement, dated
19 _____, 2000, which provides for the removal of Saeltzer Dam and the related
20 modification of Townsend's existing right to divert water from Clear Creek pursuant to the terms
21 and conditions of this contract and the related contract with the McConnell Foundation, the other

1 Townsend shareholder; and

2 NOW THEREFORE, in consideration of the mutual and dependent covenants
3 herein contained, it is hereby mutually agreed between the parties hereto as follows:

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1. When used herein unless otherwise distinctly expressed, or manifestly

(a) "Calendar Year" shall mean the period January 1 through December 31.

(b) "Substitute Water" shall mean the CVP water made available to the

(c) "Year" shall mean the period from and including March 1 of each

EFFECTIVE DATE OF CONTRACT

2. This contract shall be effective on the date first herein written and shall remain

SUBSTITUTE WATER TO BE MADE AVAILABLE

3. (a) In exchange for the Contractor agreeing to the termination of the Agreement and its commitment not to exercise any right or claim of right to divert Clear Creek at the Saelzer Dam, Reclamation shall make available to the Contractor, at no charge for the Substitute Water or the use of CVP facilities, 900 acre-feet of water each Year as requested and scheduled by the Contractor as provided in the Agreement. The water shall be delivered to the Contractor at the point of diversion herein, for use by the Contractor and/or its designee(s) within the portion of Shasta County that is within the permitted place of use for CVP water and in accordance with the terms and conditions of this contract, and applicable State and Federal laws. The Contractor's designation

1 of one or more persons or entities as designees under this subsection shall not be deemed an
2 assignment or transfer of Substitute Water requiring Reclamation approval.

3 (b) Except as provided in subsection 5(d), Reclamation shall not reduce the
4 annual quantity of Substitute Water made available under this contract, irrespective of any
5 reductions imposed on CVP water right settlement contractors or CVP water service contractors.

6 (c) If the Contractor desires to transfer Substitute Water for use outside the
7 area described in subsection (a) above, the proposed transfer must be determined by Reclamation
8 to be in compliance with the applicable CVP water right permit(s) and all applicable Federal and
9 State laws, including, but not limited to, the National Environmental Policy Act, 42 USC
10 Section 4321, et seq.; and the Endangered Species Act, 16 USCS Section 1531, et seq.. All costs
11 associated with such compliance shall be the responsibility of the Contractor

12 (d) If the place of use of transferred Substitute Water is outside Shasta
13 County, the maximum quantity of Substitute Water available to the Contractor for use within the
14 Contractor's boundaries during the term of such a transfer shall be reduced by 1.786 acre-feet for
15 each acre-foot of Substitute Water transferred outside Shasta County.

16 (e) The Contractor, hereby assigns to Reclamation, on behalf of the United
17 States, any and all rights and claims of right it has to divert any water from Clear Creek in excess
18 of the 900 acre-feet per Year for which Substitute Water shall be made available in accordance
19 with the terms and conditions of this contract.

20 TIME FOR EXCHANGE OF WATER / POINT OF DELIVERY FOR SUBSTITUTE WATER

21 4. (a) Substitute Water shall be made available to the Contractor and/or its
22 designee(s) during each Year at existing CVP facilities located in Shasta County or at such other
23 point or points of delivery mutually agreed to in writing by Reclamation and the Contractor.

1 (b) On or before March 1 of each Calendar Year, and at such other times as
2 Reclamation deems it necessary, the Contractor shall submit to Reclamation, a written schedule,
3 satisfactory to Reclamation, showing the times and quantities of Substitute Water the Contractor
4 wants Reclamation to make available to the Contractor and/or its designee(s) pursuant to this
5 contract.

6 (c) Reclamation shall make Substitute Water available to the Contractor
7 and/or its designee(s) in accordance with the initial schedule submitted by the Contractor
8 pursuant to subsection (b) above, or any revision(s) thereto, the Contractor submits to
9 Reclamation, and Reclamation approves at least seventy-two (72) hours prior to the date(s) on
10 which the requested change(s) is/are to be implemented.

11 (d) Any Substitute Water not diverted during the month in which it is made
12 available may not be diverted during any other month.

13 MEASUREMENT OF WATER

14 5. (a) The Substitute Water to be made available to the Contractor pursuant to
15 this contract will be measured with equipment owned, installed, operated, and maintained by the
16 Contractor or other parties acceptable to Reclamation. Upon request by Reclamation, the
17 Contractor will investigate the accuracy of such measurements, and any errors discovered will be
18 promptly corrected. Contractor hereby grants to Reclamation such access as may required over
19 and upon Contractor's lands and facilities in order to make such investigation.

20 (b) The Contractor shall provide Reclamation with monthly accounting
21 records acceptable to Reclamation that identify the quantities of Substitute Water the Contractor

1 and/or its designee(s) diverts pursuant to this contract. Reports will be submitted to Reclamation
2 by the 10th day of each month.

3 (c) Reclamation shall not be responsible for the control, carriage, handling,
4 use, disposal, or distribution of water beyond the delivery points, and the Contractor shall hold
5 Reclamation harmless on account of damages or claim of damages of any nature whatsoever for
6 which there is legal responsibility, including property damage, personal injury, or death arising
7 out of or connected with the control, carriage, handling, use, disposal, or distribution of such
8 water.

9 (d) Reclamation may temporarily discontinue or reduce the quantity of
10 water to be furnished to the Contractor as herein provided for the purposes of such investigation,
11 inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof
12 necessary for the furnishing of water to the Contractor, but so far as feasible, Reclamation will
13 give the Contractor due notice in advance of such temporary discontinuance or reduction, except
14 in case of emergency, in which case no notice need be given: Provided, however, That
15 Reclamation will use its best efforts to avoid any discontinuance or reduction in service for a
16 period longer than three (3) days. Upon resumption of service after such reduction and if
17 requested by the Contractor, Reclamation will attempt to deliver the quantity of water, which
18 would have been furnished hereunder in the absence of such contingency.

19 CONSTRUCTION OF CONTRACT

20 6. This contract shall never be construed as a conveyance, abandonment, or
21 waiver of any water right, or right to the use of water by the Contractor, or as conferring any right
22 whatsoever upon any person, firm, corporation, or governmental agency not a party to this

1 contract, or to affect or interfere in any manner with any right of the Contractor to the use of the
2 waters of Clear Creek, except to and in favor of Reclamation to the extent herein specifically
3 provided.

4 QUALITY OF WATER

5 7. (a) CVP facilities used to make Substitute Water available to the Contractor
6 pursuant to this contract shall be operated and maintained to enable the United States to make
7 Substitute Water available to the Contractor in accordance with the water quality standards
8 specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by
9 Section 101 of the Act of October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The
10 United States is under no obligation to construct or furnish water treatment facilities to maintain
11 or to better the quality of Substitute Water furnished to the Contractor pursuant to this contract.
12 The United States does not warrant the quality of Substitute Water made available and delivered
13 to the Contractor pursuant to this contract.

14 (b) The operation and maintenance of CVP facilities shall be performed in
15 such manner as is practicable to maintain the quality of raw water made available through such
16 facilities at the highest level reasonably attainable as determined by Reclamation.

17 WATER AND AIR POLLUTION CONTROL

18 8. The Contractor, in carrying out this contract, shall comply with all applicable
19 water and air pollution laws and regulations of the United States and the State of California and
20 shall obtain all required permits or licenses from the appropriate Federal, State, or local
21 authorities.

1 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

2 9. The expenditure or advance of any money or the performance of any
3 obligation of the United States under this contract shall be contingent upon appropriation or
4 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
5 Contractor from any obligations under this contract. No liability shall accrue to the United States
6 in case funds are not appropriated or allotted.

7 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

8 10. (a) The provisions of this contract shall apply to and bind the successors
9 and assigns of the parties hereto, but no assignment or transfer of this contract or any right or
10 interest therein shall be valid until approved in writing by Reclamation.

11 (b) The assignment of any right or interest in this contract by either party
12 shall not interfere with the rights or obligations of the other party to this contract absent the
13 written concurrence of said other party.

14 OFFICIALS NOT TO BENEFIT

15 11. No Member of or Delegate to Congress, resident commissioner, or official of
16 the Contractor shall benefit from this contract other than as a water user or landowner in the same
17 manner as other water users or landowners.

18 NOTICES

19 12. Any notice, demand, or request authorized or required by this contract shall be
20 deemed to have been given to Reclamation when mailed, postage prepaid, or delivered to the
21 Area Manager, Northern California Area Office, Bureau of Reclamation, PO Box 988, 1140
22 West Wood Street, Willows, California, 95988, and to Centerville Community Services District,
23 when mailed, postage prepaid, or delivered to PO Box 990431, 8930 Placer Road, Redding,
24 California, 96001. The designation of the addressee or the address given above may be changed
25 by notice given in the same manner as provided in this Article for other notices.

1 IN WITNESS WHEREOF, the parties hereto have signed their names as of
2 the date and year first above written.
3

4 UNITED STATES OF AMERICA

5 By: _____
6 Regional Director, Mid-Pacific Region
7 Bureau of Reclamation

8 CENTERVILLE COMMUNITY SERVICES DISTRICT

9 By: _____
10 President

11 ATTEST:

12
13 By: _____
14 Secretary

15 (I:Center-5.wpd)

ATTACHMENT 4

Contract No.
00-WC-20-1719-B

INSTREAM FLOW PRESERVATION AGREEMENT

by and among

U.S. BUREAU OF RECLAMATION,

U.S. FISH AND WILDLIFE SERVICE, AND

CALIFORNIA DEPARTMENT OF FISH AND GAME

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INSTREAM FLOW PRESERVATION AGREEMENT

by and among

**U.S. BUREAU OF RECLAMATION,
U.S. FISH AND WILDLIFE SERVICE, AND
CALIFORNIA DEPARTMENT OF FISH AND GAME**

This Agreement, entered into by and among U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (Service), and California Department of Fish and Game (Department) (hereinafter collectively referred to as the "Parties"), is a necessary element of the proposed Saeltzer Dam Fish Passage and Flow Preservation Project (Project) and serves as the mechanism to ensure that releases at Whiskeytown Dam on Clear Creek will be, at a minimum, equivalent to the releases made prior to the Project.

1.0 RECITALS

The Parties enter into this Agreement with the following understandings:

- 1.1 On March 31, 1960, Reclamation entered into an agreement with Department, entitled "Memorandum of Operating Agreement for Streamflow Maintenance for the Protection and Preservation of Fish and Wildlife and the Recreational Resources Attendant Upon Clear Creek as Affected by Whiskeytown Dam and Its Related Works and Diversions of Water Under Contracts with the United States" which provides for the bypass or release of certain flows from Whiskeytown Reservoir.
- 1.2 On May 23, 1960, Reclamation entered into separate agreements with G.E. Oaks and Townsend Flat Water Ditch Company. Both of these agreements provide that Reclamation will not store or divert any part of the waters flowing into Whiskeytown Reservoir that are required to maintain certain designated flows in Clear Creek as measured at the Igo Bridge.

- 1.3 Since approximately 1964, Reclamation has been operating Whiskeytown Dam and Reservoir in accordance with an informal agreement with Service and the National Parks Service which provides for the bypass or release of specified flows to protect, preserve, and enhance the recreational and fishery values for the Whiskeytown National Recreation Area (Parks Agreement), as well as to satisfy the flow requirements of the above-identified agreements.
- 1.4 On October 5, 1999, the U.S. Department of the Interior issued its Final Decision on Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (Decision). The Decision assumed a minimum flow criteria for Clear Creek based substantially on the above agreements. Reclamation is currently operating Clear Creek releases to meet these criteria which is provided in Table 1.
- 1.5 Section 4.4 of the Agreement by Townsend Flat Water Ditch Company, Reclamation, and Department, dated June 24, 2000, regarding the Project, requires Reclamation to ensure that bypasses or releases at Whiskeytown Dam on Clear Creek are, at a minimum, equivalent to the bypasses or releases made pursuant to Interior's Decision.
- 1.6 Section 3406 (b)(12) of the Central Valley Project Improvement Act (CVPIA), directs the Secretary of the Interior to develop and implement a comprehensive program to provide flows to allow sufficient spawning, incubation, rearing, and out migration for salmon and steelhead trout from Whiskeytown Dam, as determined by instream flow studies conducted by Department after the fish passage problem at Saeltzer Dam is resolved and Clear Creek below Whiskeytown Dam is restored.

2.0 OBLIGATIONS

The Parties agree as follows:

- 2.1 Unless and until the bypass and release schedule specified in Table 1 of this Agreement is modified based on the results of future instream flow studies

conducted by the Department in accordance with Section 3406(b)(12) of the CVPIA, in addition to releasing the amounts of water necessary to satisfy existing or recognized senior water rights between Whiskeytown Dam and the mouth of Clear Creek, Reclamation shall at all times bypass or release over, under, around or through Whiskeytown Dam and into the natural streambed of Clear Creek immediately below said Dam, the flows of water specified in the release schedule attached hereto as Table 1 for the maintenance of fish and wildlife resources. Reclamation shall use its best efforts to ensure that those bypasses or releases are not diverted from Clear Creek for out-of-stream uses in accordance with the bypass or release schedule attached hereto as Table 1. These bypasses or releases are for instream flow purposes from Whiskeytown Dam to the mouth of Clear Creek. Reclamation shall use its best efforts to ensure that those bypasses or releases are not diverted from Clear Creek for out of stream uses.

- 2.2 As used in Table 1 attached hereto, the term "Normal Year" shall mean each year except for "Critical Dry Years," and the term "Critical Dry Year" shall be defined as it is in the Decision.
- 2.3 This Agreement supercedes the 1960 Memorandum referred to in Paragraph 1.1 above, and the Parks Agreement referred to in Paragraph 1.3, above.

3.0 SIGNATURES

- 3.1 This Agreement may be executed in counterparts. Reclamation shall retain a copy of the Agreement with all original executed signatures. Reclamation will distribute copies of the Agreement with executed signature pages to each Party within 30 days of the Agreement's execution. Each Party hereby represents and warrants that the person executing this Agreement is duly authorized to do so on its behalf.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date written below.

U.S. BUREAU OF RECLAMATION

Lester A. Snow
Regional Director

Date

U.S. FISH AND WILDLIFE SERVICE

Michael Spear
Manager, CA/NV Office

Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

Robert C. Hight
Director

Date

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TABLE 1

WHISKEYTOWN DAM BYPASS OR RELEASE SCHEDULE

Period	Normal Year (cfs)	Critical Year (cfs)
January 1 - October 31	50	50
November 1 - December 31	100	70